

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

TRAVIS and MICHELLE VAIL,

Plaintiffs,

v.

COUNTRY MUTUAL INSURANCE  
COMPANY,

Defendant.

Case No. 2:13-CV-02029-SU

**OPINION AND ORDER**

**Michael H. Simon, District Judge.**

United States Magistrate Judge Patricia Sullivan issued Findings and Recommendation in this case on March 17, 2015. Dkt. 49. Judge Sullivan recommended that Defendant's Motion for Summary Judgment (Dkt. 25) be granted in part and denied in part. Specifically, Judge Sullivan recommended that Defendant's motion be "denied as to Plaintiffs' breach of contract and negligent supervision claims, and granted in all other respects."

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(C). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate's findings and recommendations if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate's recommendations for "clear error on the face of the record."

Both parties timely filed objections. Dkts. 51, 52. Plaintiffs argue that Judge Sullivan's recommendation that the Court grant summary judgment for Defendant on Plaintiffs' claims for fraud, intentional infliction of emotional distress, respondeat superior, and punitive damages is erroneous. Defendant objects only to the portion of the Findings and Recommendation respecting Plaintiffs' claim for negligent supervision.

The Court has reviewed *de novo* those portions of the Findings and Recommendation to which Plaintiffs and Defendant have objected, as well as both parties' objections and the underlying briefing in this case. The Court agrees with Judge Sullivan's reasoning and adopts the Findings and Recommendation.

For those portions of Judge Sullivan's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

### **CONCLUSION**

The Court ADOPTS Judge Sullivan's Findings and Recommendations. Dkt. 49. Defendant's Motion for Summary Judgment (Dkt. 25) is GRANTED in part and DENIED in part. Summary judgment is DENIED as to Plaintiffs' claims for breach of contract and negligent supervision, and GRANTED in all other respects.

**IT IS SO ORDERED.**

DATED this 11th day of May, 2015.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge